

## REMARKS

### SPECIFICATION AND DRAWINGS

Formal Replacement drawings are filed herewith.

The minor amendments to the specification and to replacement FIG. 5 are intended to correct minor errors identified in the present application.

In particular with respect to replacement FIG. 5, reference number 200 replaces reference number 2 included in original FIG. 5, because reference number 2 is used to refer to an element in FIG. 2b. With respect to the specification, it is also requested that paragraph 0049 of the Specification be amended to replace the reference number "2" with a reference number "200" in all three of the locations where the number "2" is present in that paragraph.

Additionally, it is requested that paragraph 0040 of the specification be amended as shown so that the second-to-last line of that paragraph reads "cavity 48" rather than "cavity 45" and thereby conforms to the reference numeral used in the associated figure.

Further, it is requested that paragraph 0056 be amended in its first line as shown to read "one of which" rather than "two of which", so as to properly reflect what is shown in FIG. 4B of the Application.

Also, it is requested that paragraph 0083 be amended to completely omit the number "140" since that number is not used in FIG. 17 of the application, which is the subject of that paragraph.

Each of these amendments is being made to correct a minor error in the application and is not being made for any reason substantially related to the patentability of the present application. None of these amendments involves the addition of new matter to the application.

### CLAIMS

With respect to the claims, the Applicant appreciates the Examiner's consideration of the present application, in which claims 2-21, 23-28, 30-33, and 35-37 are pending. Claims 2, 12-21, 23-28, 30-33 and 35 are allowed. Claim 7 is indicated as being allowable if rewritten in independent form, including all the limitations of the base claim and any intervening claims. Claims 3-5, 8, 9, 36, and 37 are rejected under 35 U.S.C. 103(a), as being unpatentable over U.S. Pat. Publication No. 2003/0095336 to Floyd in view of U.S. Pat. No. 7,367,550 to Lee.

Additionally, claims 3, 4, 6-8, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2184562 to Silver in view of U.S. Pat. No. 7,367,550 to Lee.

With this response, claims 7 and 12 are amended. In particular, claim 7 is rewritten in independent form including all the limitations of claims 3, 4, and 6, and is therefore allowable. Claim 12 is amended to better define the group of actuators. This amendment is supported by the present application, in particular at paragraph 50. No new matter is added.

Reconsideration and review of the pending claims, as amended, are respectfully requested.

With respect to independent claims 3 and 36, the Examiner asserts that Floyd discloses all the limitations of these claims, except that Floyd does not disclose wherein the first partition is formed from polydimethylsiloxane (PDMS). The Examiner asserts that Lee discloses a deflectable portion of a wall is made from polydimethylsiloxane, and that it would have been obvious to one of ordinary skill in the art to use polydimethylsiloxane for the first partition as shown by Lee with the fluidic lens of Floyd as being no more than the predictable use of prior-art elements according to their established functions.

Applicant disagrees. As stated in MPEP 2141.01(a), to rely on a reference under 35 U.S.C. 103, it must be analogous prior art. Specifically:

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed." *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole.

The present application relates to a fluidic lens. In contrast, Lee relates to a peristaltic mixing and oxygenation system for various bioprocesses. The two fields of endeavor are not the same, nor even related, and the problems addressed by the present application and the Lee reference are different. The lens of the present invention solves a problem of inflexibility of optical characteristics of traditional lenses by providing a fluidic lens wherein an optical property of the lens can be varied. On the other hand, the system of Lee is addressed to the problem of providing effective mixing and oxygenation for various bioprocesses in a small volume, because

in a small volume it is difficult to generate turbulent flows to achieve efficient oxygenation. The system of Lee includes one or more walls of a chamber which are made of a gas-permeable material and which have portions that are selectively deflectable into the chamber. Without the benefit of a word search for "polydimethylsiloxane", it is believed that the subject matter of Lee logically would not have commended itself to the attention of the present inventors.

Thus it is believed that Lee is non analogous art and it is improper to combine Lee with either Floyd or Silver. Independent claims 3 and 36 therefore define over the prior art and are allowable. Claims 4-6, 8-11 depend from claim 3, and claim 37 depends from claim 36, and all are also allowable. In light of the remarks above, Applicant respectfully requests reconsideration and allowance of the pending claims.

A one-month extension of time is believed to be due for the filing of this Amendment and Response. Please charge Deposit Account 23 2053 \$65 for the one-month extension. Any required petition should be considered provisionally made.

The Applicant invites the Examiner to telephone the Applicant's attorney at 414-978-5422 if discussion would be of assistance to the Examiner or further the prosecution of the present application.

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Respectfully submitted,

  
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